

DEMOCRATIC PARTY

SUBMISSION ON THE NATIONAL DEFENCE FORCE

1. INTRODUCTION

1.1 As with other submissions on the security services, this submission should be read in conjunction with the first submission of the DP on accountability of the forces. It is central to the Party's philosophy that all security services should be fully accountable to the legislature (at the level which establishes them and votes them funds) and subject to the Constitution, to the Bill of Rights, to the legislation governs them and to an appropriate Code of Conduct.

1.2 As a democratic state and a member of the UN, OAU, SADCC and international organizations, South Africa is now a full and respected participant In the “global village”. As such, South Africa has duties and obligations in the field of defence which transcend traditional concepts of the pure defence of the territorial integrity of our nation. Moreover, with the increasing currency of the “new world order” which has supplanted the sterile stand-off which characterized the Cold War, South Africa can and will be asked to shoulder its share of responsibility for the collective security the sub-region, the African continent, and the world at large.

1.3 The implication of this, from the point of view of the constitution, is that it will be virtually impossible to define within our new constitution a satisfactory definition of “national security” which will cover all eventualities to which the National Defence Force might be asked to respond. Assuming the constitution to be sovereign, the last thing the executive needs when it is required to deploy the SANDF rapidly is a legal constitutional challenge as to the constitutionality of such a deployment. To the extent that such a definition is necessary, its place is in a reformulated Defence Act, and not within the constitution. What is necessary in the constitution is that when the SANDF is deployed, the legislature is constitutionally obliged to be convened within as short a period of time as is practical to pass a political judgement on the advisability of such a deployment.

2. THE SANDF AND THE EXECUTIVE

2.1 The President should be the commander-in-chief of the SANDF. He or she should

have the power to declare a state of war/national defence and a state of emergency subject to the constitution and Bill of Rights and in terms of relevant legislation, and should then be competent to deploy the SANDF, both regular and part-time forces, Such a declaration should be made on the advice of the Cabinet, and should be subject to confirmation by a resolution of Parliament within 14 days. The Constitution should require Parliament to be convened within this period to consider such a resolution, and this provision should itself be entrenched by special amending procedures. Should Parliament fail to support the declaration by resolution, the state of war or state of emergency would lapse.

2.2 The President should appoint a person in the executive responsible for the management of the SANDF, and this person would be accountable to Parliament for the effectiveness of the Force. Each year, this Minister would be required to account to Parliament for the activities of the Force via his or her budget vote. In the event of Parliament being dissatisfied with his or her management Parliament could pass a motion of censure, after which the President would be obliged to replace the Minister.

2.3 The President should be competent to nominate the Chief of the SANDF and the Secretary for Defence after consultation with the Cabinet. Such appointments would be subject to confirmation by the Joint Select Committee on Defence. Each year the Secretary for Defence should be obliged to present to Parliament a report the activities of the Department and the SANDF.

3. THE SANDF AND THE LEGISLATURE

3.1 Apart from the powers referred to above, Parliament shall appointed a Joint Select Committee on Defence from both Houses and all parties represented in Parliament. This Committee should have prior and oversight in respect of all aspects of the management deployment, preparedness, training and armaments of the SANDF.

3.2 Parliament should appoint a Defence Commissioner for a fixed period of seven years. The role of the Defence Commissioner should be to investigate complaints and to conduct any other investigations he or she may deem fit, regarding abuses of power and/or infringements of the Code of Conduct. The Defence Commissioner shall, whenever he or she deems fit, and at least once a year lay before Parliament a report on either specific investigations or on his or her observations during the year in question.

3.3 Apart from confirming states of war or emergency, Parliament should have the power to confirm any continuous deployment of SANDF troops engaged in active service for more than 14 days. Moreover, no member of the SANDF should be deployed in active service beyond the borders of South Africa without parliamentary approval.

3.4 Parliament shall have the power to confirm, amend or vary any regulation relating to the disciplinary code applicable to members of the SANDF.

4. THE SANDF AND THE BILL OF RIGHTS

4.1 Serving members of the SANDF shall not enjoy all the rights guaranteed under the Bill of Rights, and specifically shall not be allowed to stand for election to public office, strike, or take any action which threatens military discipline. Because these rights have been diminished, serving members of the SANDF will enjoy the protection of a Code of Conduct, and shall be entitled to register complaints with the Defence Commissioner in the event of infringements of the Code. In addition, all members of the SANDF will be entitled to approach Members of Parliament and/or the Courts.

4.2 Because of the uniquely dangerous and destructive nature of the business of the SANDF it may be necessary to vary provisions of the Bill of Rights guaranteeing gender equality.

5. THE SANDF AND THE PROVINCES

5.1 Both for practical reasons of efficiency and because it is easier to recruit this way, provinces may be delegated specific functions relating to the management of the parttime forces. Specifically, provinces should be charged with the administration of Military Veterans Affairs (which is chiefly a welfare function).

5.2 Provincial governments may approach the Minister of Defence requesting the assistance of the SANDF in the event of natural disasters or when safety and security in a particular province is threatened. Any such deployment for more than 14 days would be subject to parliamentary approval.

5.3 Whatever functions may be delegated to the provinces, the control over armaments would remain with the central government.